vessel "Enfield" of Panama in these admiralty proceedings as security for their claim of US$47,437.89 for disbursements which they had incurred as owner's agents in Madras in February, March and April 1980. In the affidavit leading to the warrant of arrest, it was deposed that Enfield Shipping Corporation S.A. was the owner of the vessel at the time the causes of action had accrued and at the date of the Writ of Summons. This assertion was based on the records of the Panamanian ships' registry and Lloyd's Register of Shipowners 1979/1980.

By two motions filed on May 20, 1980 and October 8, 1980, the Appellants applied to set aside the Writ and all proceedings thereunder on the ground that since the accrual of the causes of action, the ownership of the vessel has been transferred to Barbury (Panama) S.A. (hereinafter referred to as "Barbury") with the result that the requirements of sub-section 4(4) (1) (a) of the High Court (Admiralty Jurisdiction) Act (Cap. 6) were not complied with. The learned Judge dismissed both the motions with costs. After reviewing the affidavit evidence, he said:

"Taking all the above into consideration, one arrives at the irresistible conclusion that Richard Hwa is the person *in personam* who controls all the three companies and therefore the vessel "Enfield" is beneficially owned as respects all the shares therein by Richard Hwa.

I am satisfied on a balance of probabilities from the evidence that Richard Hwa was the owner of the vessel at the time the cause of action arose and is also the person who at the time the proceedings commenced beneficially owned all the shares in the vessel. Such being the case the requirements of section 4(4) Cap. 6 have been complied with and in the circumstances the two motions are dismissed with costs."

This appeal was brought against the decision of the learned Judge. By a Respondents' notice, the Respondents sought to support the decision by asserting that for the additional reasons stated in the Respondents' notice, the vessel was beneficially owned as respects all shares by Enfield Shipping Corporation S.A. At the conclusion of the hearing of this appeal, we dismissed it with costs. We now give our reasons.

It is beyond dispute that in November 1977 Enfield Shipping Corporation S.A. as the owners of the vessel had appointed a Singapore Company, Ganry Lines Pte. Limited. ("Ganry Lines"), as the Operations Manager of the vessel "with effect from September 1, 1977 until cancelled". Ganry Lines were authorised to appoint agents and incur disbursements for the maintenance and operations of the vessel. One Richard Hwa was described as the "de facto Manager" of Enfield Shipping Corporation S.A. He was also the Principal shareholder and Managing Director of Ganry Lines.

The Respondents were ships' agents in India and in 1980 they were appointed by Ganry Lines as the general agents for the vessel in India. The Respondents were accordingly duly appointed agents of Enfield Shipping Corporation S.A. for all Indian ports. In that capacity, they had incurred the disbursements which they were now claiming. The said Richard Hwa was the principal party who had dealt with the Respondents in all agency matters.

On the other hand the Appellants sought to show that by a memorandum of sale dated April 15, 1980, Enfield Shipping Corporation S.A. had agreed to sell the vessel "as is where is" for US$145,000 to Barbury, a Panamanian Corporation and one of the Appellants. The sale was to take place on delivery in Singapore. It was alleged that Barbury had paid the purchase price and delivery had taken place on May 14, 1980 in Singapore when the vessel returned from India.

Having regard to the affidavit evidence, we are satisfied that the purported sale of the vessel by Enfield Shipping Corporation S.A. to Barbury was a device and a sham designed to defraud claimants such as the Respondents so that the vessel as a security was put out of their reach. The said Richard Hwa held himself out as the President of Barbury. His mother was also described as the President as well as the director. His wife was the secretary and director. Although Tan Han Tuan, who was apparently not a member of the family, was the treasurer and director, Tan's role was nominal. The evidence purporting to show the payment of the purchase price was most unsatisfactory. Most of the alleged payments were made before the Memorandum of Agreement was signed on April 15, 1980, a most unusual feature for which the Appellants' explanation was unacceptable. No delivery of the vessel had taken place on May 14, 1980 or at all. As late as July 12, 1980 a mate's receipt issued by the vessel's office still bore the seal of "Enfield Corporation". The Bill of Sale which was allegedly executed on April 15, 1980 and handed over to Barbury was neither notarialised by a Notary Public in Taiwan nor legalised by the Panamanian Consul in Taiwan. The Appellants offered the excuse that there was no Panamanian Consul in Taiwan, which assertion was later proved to be false. What is even more incredible is the execution of a substitute Bill of Sale on August 13, 1980 before a Singapore Notary Public whilst the first motion was in progress and after the vessel had sunk a month earlier in Singapore following a collision.

We are entitled to look at the transactions and determine the true beneficial ownerships of the vessel: *The Aventicum*[2] and *The Maritime Trader*[3]. The evidence amply confirm that Barbury did not carry the true face of a corporate *bona fide* purchaser and we find that Enfield Shipping Corporation S.A. was at all material times the beneficial owner of the vessel. For all these reasons, we agreed with the decision of the learned Judge to dismiss the motions.

Motions dismissed.

Solicitors: *Allen & Gledhill; Selvadurai, Pala Krishnan & Partners.*

THE "ASEAN PROMOTER"; UNITRADE LTD. v. M.V. "ASEAN PROMOTER", "ASEAN PROGRESS", "ASEAN PROSPERITY", "ASEAN VENTURE", OWNERS & ORS. INTERESTED

[O.C.J. (Abdul Wahab Ghows J.) November 18, 1981]
[Singapore – Admiralty in Rem No. 703 of 1979]

Shipping Law – Arrest of ship – Wrongful arrest – Ship arrested not property of person liable "in personam" in plaintiffs' claim against another ship – Meaning of "beneficially-owned".

Shipping Law – Claim against "Asean Promoter" – Arrest of "Asean Progress" – Dispute as to ownership of "Asean Progress" – Defendants not owners of "Asean Promoter" – Meaning of "beneficially-owned".

The plaintiffs claimed as owners of a cargo of fresh ginger which was shipped on the vessel "Asean Promoter" for damages for loss of or damage to the cargo during its storage in Singapore for transshipment to Karachi.

On March 27, 1980 the plaintiffs requested for a Warrant of Arrest against the ship "Asean Progress". The defendants, the Straits Maritime Leasing Pte. Ltd. which at the date the ship was arrested were the owners of the "Asean Progress" obtained the release of the ship from the arrest on March 29, 1980 by delivering to the plaintiffs a Banker's Guarantee.

On April 16, 1980 the defendants applied for the removal of the Writ of Summons against the "Asean Progress" and for the return of the Banker's Guarantee. The Court allowed the defendants' application.

Held: the "Asean Progress" was not liable to arrest as there was no evidence that it was the property of the person liable *"in personam"* on the plaintiffs' claim arising in connection with the ship "Asean Promoter".

Cases referred to:–

(1) *Smith, Stone & Knight Ltd.* v. *Birmingham Corporation* [1939] 4 All E.R. 116.
(2) *"The Roberta"* (1937) 58 Lloyds L.R. 159.
(3) *"The Pangkalan Susu/Permina 3001"* [1977] 2 M.L.J. 129, 130.
(4) *"The Permina 108"* [1977] 1 M.L.J. 49.

ADMIRALTY IN REM.

Miss Carol Wong for the plaintiffs.

Syed Hassan Almenoar for the defendants.

Cur. Adv. Vult.

Abdul Wahab Ghows J.: Unitrade Ltd. (hereinafter referred to as "the Plaintiffs") filed a Writ of Summons on 22.12.79 in this Admiralty Suit in Rem No. 703/79 claiming as the owners of a cargo of 48.4 metric tons of fresh ginger packed in 968 wooden cases lately laden on board the ship "Asean Promoter" and/or as holders of and/or indorsees of a bill of lading No. BTS/1 dated 22.2.79 whereunder the said cargo was shipped from Bangkok for Karachi for damages for loss of and/or damage to the said cargo during its storage in Singapore for transshipment to Karachi.

On the 27.3.80 the Plaintiffs requested for a Warrant of Arrest to be executed by the Bailiff of the High Court for the arrest of the ship "Asean Progress" which was lying at the Eastern Anchorage, Singapore. The Straits Maritime Leasing Pte Ltd. (hereinafter referred to as "the Defendants") who at the date the ship was arrested were the owners of the ship "Asean Progress" obtained the release of the ship from arrest on the 29.3.80 by delivering to the Plaintiffs' solicitors a Banker's Guarantee in the sum of $65,176/-.

On 16.4.80 the Defendants filed a Notice of Motion to move the court for the following orders:–

"1. That the Writ of Summons and all subsequent proceedings herein against the m.v. "Asean Progress" be set aside; alternatively that the Writ of Summons herein be amended by striking out the words "Asean Progress" on the ground of want of jurisdiction in rem under section 4(4) of the High Court (Admiralty Jurisdiction) Act (Cap. 6) and/or for non-compliance with the said section.
2. That the Bankers' Guarantee given to the Plaintiffs to obtain the release from arrest of the vessel "Asean Progress" be discharged and of no effect and that the Plaintiffs do deliver the said Bankers' Guarantee to the Defendants.
3. Such further or other order as this Honourable Court shall deem fit and expedient to grant.
4. That the Plaintiffs do pay the Defendants' costs of this action and of this Motion."

The said Notice of Motion was heard on 29.10.81 and after hearing counsel for the Plaintiffs and the Defendants I made the following orders:–

"That the Writ of Summons and all subsequent proceedings herein against the m.v. "Asean Progress" be set aside;
The Bankers' Guarantee given to the Plaintiffs to obtain the release from arrest of the m.v. "Asean Progress" be discharged and Plaintiffs to return the said Bankers' Guarantee to Defendants;
Costs of this action and motion to be paid by the Plaintiffs to Defendants."

against which the Plaintiffs now appeal.

It is not disputed that the ship in connection with which the Plaintiffs' claim in this action arose is the "Asean Promoter". The "Asean Promoter" when it carried the Plaintiffs' cargo was beneficially owned as respects all the shares therein by M & G Maritime Services Pte. Ltd. (hereinafter referred to as "M & G"). The persons who would be liable to the Plaintiffs on the claim in an action *in personam* when the cause of action arose and at the date of the issue of the Writ in this action are the owners of the "Asean Promoter", namely M & G. The ship "Asean Progress" is not the ship in connection with which the Plaintiffs' claim in this action arose. At all material times, the ship "Asean Progress" was beneficially owned as respects all the 64 shares therein by the Defendants. No share in the ship "Asean Progress" was at any time beneficially owned by M & G.

It is also not in dispute that the Defendants and M & G, who were the owners of "Asean Promoter", are wholly owned subsidiary companies of Haw Par Brothers International Ltd. (hereinafter referred to as "Haw Par") which is a public company quoted on the Singapore Stock Exchange. The Defendants, M & G and Haw Par are all companies incorporated in Singapore.

Counsel for the Defendants argued that the Plaintiffs' claim arose in connection with the ship "Asean Promoter". The "Asean Promoter" was not owned by the Defendants and the Plaintiffs have no claim against the Defendants. He added that the ship "Asean Progress" was presumably arrested under section 4(4) of the High Court (Admiralty Jurisdiction) Act; but the ship "Asean Progress" at the time when the action was brought by the Plaintiffs was not beneficially owned as respects all the shares therein by the person who would be liable on the Plaintiffs' claim in an action *in personam,* namely M & G the owners of the ship "Asean Promoter".

In reply, Miss Carol Wong, counsel for the Plaintiffs said that in certain circumstances the corporate veil could be lifted and urged the court to lift it. She added that M & G was only a shell company with a paid up capital of $2 both issued to Haw Par. The Defendants' paid up capital was $3 million. She added that according to Lloyd's Register, the Defendants managed the ship "Asean Promoter". The Defendants' directors were also directors of M & G and of Haw Par. She argued that the above facts satisfied

the criteria set out by Atkinson J. in *Smith, Stone & Knight Ltd.* v. *Birmingham Corporation*[1] relevant in determining the question whether or not a subsidiary was the agent of its parent company. Then referring to *The Roberta*[2] Miss Wong said that if the corporate veil were lifted Haw Par would be held to be liable to the claim in an action *in personam* in this case as from the facts M & G were nothing more than their agents for conducting their shipping business. In conclusion she said that as the Defendants managed and controlled the "Asean Promoter" this gave the Plaintiffs the right to arrest other ships beneficially owned by the Defendants under section 4(4) of the said Act. Alternatively the persons liable on the claim were Haw Par as they were in possession of and in control of the "Asean Promoter" thus giving the Plaintiffs the right to arrest any other ship beneficially owned by them. The beneficial owners, according to Miss Wong, of the vessels "Asean Promoter" and "Asean Progress" were Haw Par.

It is a question of fact in each case whether a subsidiary was carrying on the parent company's business or its own. In the instant case M & G were obviously so under capitalised that it could not carry on an independent existence. All the directors of M & G were also directors of Haw Par. I therefore had no hesitation in lifting the veil of incorporation and in holding that on a balance of probabilities M & G were the agents of Haw Par for the carrying on of the latter's business. If my decision in this regard is correct Haw Par would be liable on the Plaintiffs' claim in an action *in personam* arising in connection with the ship "Asean Promoter". But the Plaintiffs would still have no right to arrest the "Asean Progress" because this ship was beneficially owned by the Defendants and not by Haw Par. Not one share in the ship "Asean Progress" was registered as owned by Haw Par. There is no evidence on record that Haw Par was the equitable owner of the ship "Asean Progress" at the material time. However, Miss Wong contended that as the Defendants were a wholly owned subsidiary of Haw Par *ipso facto* the Defendants' ship "Asean Progress" was beneficially owned by Haw Par. This contention cannot be true even under the law relating to companies because Haw Par would be entitled to a distribution of the property of its subsidiary on its winding-up only after all the latter's liabilities have been satisfied – see section 264 of the Reprint of the Companies Act (Cap. 185 of the Revised Edition) – and if the subsidiary were insolvent Haw Par would get nothing.

The expression "Beneficially owned" appearing in section 4(4) of the High Court (Admiralty Jurisdiction) Act has been judicially defined in the Singapore Court of Appeal case of *"The Pangkalan Susu/Permina 3001"*[3] in which the following passage appears at page 130:–

"The question is what do the words 'beneficially owned as respects all the shares therein' mean in the context of the Act. These words are not defined in the Act. Apart from authority, we would construe them to refer only to such ownership of a ship as is vested in a person who has the right to sell, dispose of or alienate all the shares in that ship. Our construction would clearly cover the case of a ship owned by a person who, whether he is the legal owner or not, is in any case the equitable owner of all the shares therein. It would not, in our opinion, cover the case of a ship which is in the full possession and control of a person who is not also the equitable owner of all the shares therein. In our opinion, it would be a misuse of language to equate full possession and control of a ship with beneficial ownership as respects all the share in a ship. The word 'ownership' connotes title, legal or equitable whereas the expression 'possession and control' however full and complete, is not related to title. Although a person with only full possession and control of a ship, such as a demise charterer, has the beneficial use of her, in our opinion he does not have the beneficial ownership as respects all the shares in the ship and the ship is not 'beneficially owned as respects all the shares therein, by him within the meaning of section 4(4)."

Following this authority the ship "Asean Progress" cannot be said to be beneficially owned by Haw Par as respects all the shares therein, so the Admiralty Jurisdiction of the court may not be invoked by an action *in rem* against the said ship.

There was no holding/subsidiary relationship between the Defendants and M & G. Miss Wong said that according to Lloyd's Register the Defendants managed the "Asean Promoter". No such evidence is on record. In the absence of the management contract between the Defendants and M & G, it is impossible to say whether the Defendants can be held to be liable on the Plaintiffs' claim in an action *in personam* arising in connection with the ship "Asean Promoter". The Writ filed by the Plaintiffs did not contain any particulars of negligence and there is no suggestion even in the affidavits filed herein that the Defendants or their servants or agents were responsible for the poor storage facilities in Singapore which caused the loss and/or damage to Plaintiffs' cargo of fresh ginger.

In the case of *"The Permina"*[4] the Court of Appeal at p.50 stated as follows:

"In our judgment, on the true construction of section 4(4) of the Act, a ship to be liable to arrest must be –

(a) The ship in connection with which the claim (being a claim under paragraphs (d) to (q) of section 3(1)) made in the action arose, if at the time when the action is brought it is the property of the defendant to the action, the defendant being the person who would be liable on the claim in an action *in personam* and who was either the owner or charterer of or on possession or in control of, the ship, at the time when the cause of action arose; or

(b) any other ship which, at the time when the action is brought, is the property of the person liable *in personam* and who, at the time when the cause of action arose, was either the owner or charterer of, or in possession or in control of, the ship in connection with which the claim arose."

Following this authority, it is clear that the "Asean Progress" was not liable to arrest as there is no evidence that it is the property of the person liable *"in personam"* on the Plaintiffs' claim arising in connection with the ship "Asean Promoter".

For the above reasons, I made an order in terms of the Motion.

Order Accordingly.

Solicitors: *Karthigesu & Arul; Shook Lin & Bok.*